

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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Senate Bill 1250 (as passed by the Senate)  
Senate Bill 1251 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator John J. H. Schwarz, M.D.  
Committee: Judiciary

Date Completed: 10-24-02

### **RATIONALE**

The Railroad Code prohibits a person from operating a locomotive engine on Michigan railroad tracks if his or her blood contains .10% or more of alcohol by weight, or while he or she is visibly impaired due to the consumption of alcohol or a controlled substance. A locomotive operator is presumed to be impaired if his or her blood alcohol level (BAL) is over .07%. These standards generally are consistent with Michigan's drunk driving laws for operation of a motor vehicle on the roads of this State. Some people believe, however, that, since trains are an integral part of the nation's and State's cargo handling and passenger transit services, the drunk driving standard for operating a train should be more strict than that for driving a car, as it is for operating a commercial motor vehicle (such as a truck or bus) under the Michigan Vehicle Code.

In addition, there are some inconsistencies between the prohibition in the Railroad Code and the drunk driving provisions relating to the operation of a motor vehicle on Michigan's roadways. Recent revisions to penalties for the operation of a motor vehicle, boat, snowmobile, or off-road vehicle (ORV) while impaired or under the influence have not been extended to the operation of a train. Also, in the drunk driving laws relating to motor vehicles, boats, snowmobiles, and ORVs, the measurement of alcohol in the body refers to the volume of alcohol by certain quantities of blood, breath, or urine, rather than the percentage weight of alcohol in the blood. It has been suggested that similar revisions be made to the Railroad Code.

### **CONTENT**

**Senate Bill 1250** would amend the Code of Criminal Procedure to revise the

**sentencing guidelines designation for a third or subsequent offense of operating a locomotive under the influence of liquor and/or a controlled substance, and include in the guidelines the felonies of operating a locomotive under the influence, or while impaired, causing death or serious impairment of a body function, as proposed by Senate Bill 1251 (S-1).**

**Senate Bill 1251 (S-1)** would amend the Railroad Code to revise provisions prohibiting the operation of a locomotive while under the influence of or impaired by alcohol or a controlled substance. The bill would do all of the following:

- Prohibit a person from operating a locomotive in Michigan if he or she had a bodily alcohol content (BAC) of .04 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine (rather than prohibiting operation by a person whose blood contains .10% or more of alcohol).
- Increase criminal penalties for operating a locomotive while under the influence or while impaired.
- Prescribe felony penalties for operating a locomotive while under the influence or while impaired, causing a death or serious impairment of a body function.
- Revise the prohibition against and criminal penalty for authorizing or knowingly permitting a person to operate a locomotive while under the influence.
- Revise provisions pertaining to the chemical analysis of a person's alcohol level.

**-- Include visible impairment due to the consumption of alcohol and/or a controlled substance in the Code's prohibition against operation of a locomotive while under the influence, and repeal a section of the Code that prohibits operation of a locomotive while impaired (MCL 462.355).**

Senate Bill 1250 is tie-barred to Senate Bill 1251.

**Senate Bill 1250**

A third offense of operating a locomotive under the influence is a Class E felony against the public safety, with a statutory maximum sentence of four years' imprisonment. The bill would change the statutory maximum in the sentencing guidelines to five years' imprisonment, as proposed by Senate Bill 1251 (S-1).

The bill also would include in the sentencing guidelines new felonies proposed by Senate Bill 1251 (S-1), as shown in Table 1.

Table 1

Violation	Felony Class	Crime Category	Statutory Maximum
Operating a locomotive under the influence or while impaired causing death	C	Person	15 Years
Operating a locomotive under the influence or while impaired causing serious impairment of a body function	E	Person	5 Years

**Senate Bill 1251 (S-1)**

Drunk Operation of a Locomotive

The Code prohibits a person from operating a locomotive engine upon railroad tracks in Michigan if his or her blood contains .10% or

more by weight of alcohol. The bill instead would prohibit a person from operating a locomotive upon Michigan railroad tracks if he or she had a BAC of .04 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Currently, operating a locomotive while under the influence or with a blood alcohol level (BAL) of .10% or more is a misdemeanor punishable by up to 90 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, together with costs of the prosecution. Operating a locomotive while impaired (under the provision that would be repealed by the bill) is a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$300, or both, plus costs of the prosecution. In addition, as part of a sentence for either violation, the court may order the person to perform up to 12 days of community service.

Under the bill, a violation of operating a locomotive while under the influence, while impaired, or with a BAC of .04 gram or more would be a misdemeanor punishable by up to 93 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, plus costs of the prosecution. Also, the court could order up to 45 days of community service.

Currently, a violation of operating a locomotive while under the influence or with a BAL of .10% or more, within seven years of a prior conviction, is punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both, plus costs of the prosecution. Under the bill, that penalty would apply to operation while under the influence, while impaired, or with a BAC of .04 gram rather than a BAL of .10%, and would include a minimum fine of \$200.

Under the Code, a violation of operating a locomotive while under the influence or with a BAL of .10% or more, within 10 years of two or more prior convictions, is punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both, plus costs of the prosecution. Under the bill, the penalty would be up to five years' imprisonment, a fine of not less than \$500 or more than \$5,000, or both, plus costs of the prosecution, and would apply to operating a locomotive while under the influence, while impaired, or with a BAC of .04 gram or more.

### Causing Death or Serious Impairment

Under the bill, a violation of operating a locomotive while under the influence, while impaired, or with a BAC of at least .04 gram that caused the death of another person would be a felony punishable by up to 15 years' imprisonment, a fine of not less than \$2,500 or more than \$10,000, or both. The sentencing court also could order the offender to perform up to 45 days of community service.

A violation that caused a serious impairment of a body function of another person would be a felony punishable by up to five years' imprisonment, a fine of not less than \$1,000 or more than \$5,000, or both. The sentencing court also could order the offender to perform up to 45 days of community service. "Serious impairment of a body function" would mean that term as defined in the Michigan Vehicle Code (MCL 257.58c). Under that Code, serious impairment includes, but is not limited to, one or more of the following:

- Loss of a limb, foot, hand, finger, thumb, eye, or ear or the use of a limb, foot, hand, finger, thumb, eye, or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

### Authorizing or Permitting Operation

The Railroad Code prohibits the owner or person in charge or in control of a locomotive engine or a conductor of any train of cars from authorizing or knowingly permitting the locomotive to be operated upon railroad tracks in Michigan by a person who is under the influence of alcohol and/or a controlled substance. A violation is a misdemeanor punishable by up to 90 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, plus costs of the prosecution. The bill would include in that provision operation of a locomotive by a person who was impaired by alcohol and/or a controlled substance or who

had a BAC of .04 gram or more, and would increase the maximum length of imprisonment to 93 days.

### Chemical Analysis

The Code provides that the amount of alcohol or presence of a controlled substance, or both, in the blood of a locomotive operator at the time alleged, as shown by chemical analysis of that person's blood, urine, or breath, is admissible into evidence in a criminal prosecution for any of the following:

- Operating a locomotive while under the influence, with a BAL of .10% or more, or while impaired, or authorizing or permitting such operation.
- Manslaughter resulting from the operation of a locomotive while the operator is alleged to have been impaired or under the influence or to have a BAL of .10% or more.

The bill would refer to a BAC of .04 gram or more rather than a BAL of .10% or more. The bill also would allow the admission of this chemical analysis evidence in a prosecution for murder resulting from the operation of a locomotive while impaired, under the influence, or with a BAC of .4 gram or more.

The bill would revise provisions that specify presumptions arising from the amount of alcohol in a locomotive operator's blood as shown by chemical analysis. Under those provisions, it is presumed that the person was not under the influence if there was .07% or less by weight of alcohol in his or her blood, that he or she was impaired if there was more than .07% but less than .10% blood-alcohol, and that he or she was under the influence if there was .10% or more. Under the bill, it would be presumed that the person was not under the influence or impaired if he or she had a BAC of less than .04 gram, and that the person was impaired or under the influence if his or her BAC was .04 gram or more.

The Code provides that a sample or specimen of urine or breath may be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a physician and qualified to draw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for chemical

analysis of the amount of alcohol or presence of a controlled substance. Under the bill, blood could be drawn by a licensed physician or an individual operating under the delegation of a physician, as allowed under the Public Health Code (MCL 333.16215). (That Code allows a physician to delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience, the performance of selected acts, tasks, or functions that fall within the physician's scope of practice and will be performed under the physician's supervision.)

The Railroad Code provides that liability for a crime or civil damages based on withdrawing blood and related procedures does not attach to a qualified person who withdraws or assists in the withdrawal of blood, unless the act is performed in a negligent manner. The bill would extend this liability protection to the analysis of blood, and would apply the protection to a licensed physician or individual operating under the delegation of a licensed physician.

A person charged under the Code must be advised that, if he or she refuses a peace officer's request to take a chemical analysis test, one will not be given without a court order. The bill specifies that the person also would have to be advised that the officer could seek to obtain that court order.

Under the Code, if a locomotive operator involved in an accident is transported to a medical facility and a sample of his or her blood is withdrawn, the result of a chemical analysis of that sample is admissible in a criminal prosecution for operating a locomotive under the influence. Under the bill, that result would be admissible in any civil or criminal proceeding.

If a locomotive operator involved in an accident is deceased, a sample of his or her blood must be withdrawn by the medical examiner or attending personnel of the medical facility for the purpose of determining blood-alcohol content or the presence of a controlled substance. The results of that test must be released to the Department of State Police and the medical examiner. The bill specifies, instead, that the results would have to be released to a prosecuting attorney for use in a criminal prosecution.

The bill specifies that obtaining or analyzing a person's blood, breath, or urine under the Railroad Code could not be performed in a manner prohibited by the Federal Railroad Administration in the U.S. Department of Transportation.

MCL 769.36 & 777.14m (S.B. 1250)  
462.105 et al. (S.B. 1251)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Under the Michigan Vehicle Code, there are stricter drunk driving standards for commercial truck or bus drivers than for people driving a car. The Railroad Code's drunk driving standard for the operation of a locomotive, however, is similar to the regular standard for drunk driving. Since trains, like trucks and busses, are large vehicles used for bulk transport of goods and passengers, the operation of a train on Michigan railways should be treated similarly to the operation of a commercial truck or bus on Michigan roadways with respect to driving under the influence of or while impaired by liquor or a controlled substance. Senate Bill 1251 (S-1) would accomplish this by prohibiting the operation of a train in Michigan by a person who had a BAC of .04 gram or more.

### **Supporting Argument**

The bills would update the penalties for operating a locomotive while under the influence of or impaired by alcohol or a controlled substance, making them consistent with the penalties under other drunk driving laws. Increasing the maximum misdemeanor penalty to 93 days' imprisonment would be significant because the law requires a person to be fingerprinted upon arrest if the maximum penalty is more than 92 days' imprisonment. Requiring fingerprints to be taken when a person was arrested for drunk operation of a locomotive would ensure that prior convictions were properly recorded in the event that a train operator violated the prohibition again in the future. Also, in Michigan's other laws covering drunk driving, the sentencing judge may order up to 45 days of community service, but the Railroad Code allows only 12 days of community service to

be imposed. In addition, the maximum felony penalty for a third offense of drunk driving within 10 years is five years' imprisonment, but the Railroad Code includes only a four-year maximum for a third offense of operating a locomotive while under the influence or impaired. Further, drunk driving prohibitions in other statutes include felony designations and penalties for causing the death of or serious impairment to another person, while the Railroad Code lacks those provisions. Senate Bill 1251 (S-1) would make these changes to the Railroad Code, applying penalties for the drunk operation of a train that would be consistent with other drunk driving sanctions, and Senate Bill 1250 would make accompanying changes in the sentencing guidelines.

### **Supporting Argument**

In recent years, other laws covering drunk driving have been changed to measure impairment and driving under the influence by the amount of alcohol present in specific volumes of blood, breath, or urine, rather than referring only to the percentage of alcohol in the blood, by weight. Senate Bill 1251 (S-1) would update the Railroad Code to use the same measurements used in drunk driving prohibitions in the Michigan Vehicle Code (for motor vehicles) and in the Natural Resources and Environmental Protection Act (for boats, snowmobiles, and ORVs).

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

Senate Bills 1250 and 1251 (S-1) would have an indeterminate fiscal impact on State and local government.

There are no statewide data available at this time to indicate how many offenders are convicted of a first or second offense for operating a locomotive under the influence. A first-time offense would be punishable by incarceration in a local facility for up to 93 days rather than 90 days. A second-time offender would still receive up to one year's imprisonment. Local units incur the cost, which varies from \$27 to \$65 per day.

According to the 1999 Department of Corrections Statistical Report, no offenders were convicted of or serving time for a third offense of operating a locomotive under the

influence. Raising the statutory maximum for this offense from four years to five would increase the longest allowable minimum sentence from 32 months to 38 months. If an offender were convicted and received the longest allowable minimum sentence, it would increase the cost to the State by \$12,500, given that the average annual cost of incarceration is \$25,000.

Offenders who operate a locomotive while under the influence and cause serious impairment of body function of another person are currently most likely to be charged with operating a locomotive under the influence and receive up to 90 days in a local facility. Under Senate Bills 1250 and 1251 (S-1), an offender would receive up to five years in a State prison. The State, rather than local units, would incur the cost of incarceration, at an average annual cost of \$25,000. If one offender were convicted of this offense and received the longest allowable minimum sentence, it would cost the State \$79,000.

Offenders who operate a locomotive while under the influence and cause death are currently most likely to be charged with operating a locomotive under the influence but also may be charged with manslaughter and can receive up to 15 years' imprisonment. Under the bills, an offender would be convicted of operating a locomotive while under the influence and causing death and would receive up to 15 years' imprisonment. To the extent that the bills would increase the length of sentences served by offenders for this act, by creating the new offense with a lower standard of proof than manslaughter, they could increase State costs. If one additional offender were convicted and received the longest allowable minimum sentence, rather than receiving up to 93 days for operating a locomotive under the influence, it would cost the State \$237,500.

The bills also could increase State and local criminal justice costs by making the blood alcohol level, used to determine whether someone is operating a locomotive under the influence, more strict, thereby increasing the number of offenders convicted for these offenses.

In addition, the bills would benefit libraries by increasing penal fine revenues. If one offender were convicted of each of the

applicable offenses, penal fine revenue would increase at least \$4,200 and could increase as much as \$15,500.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.